

AMENDED MEMORANDUM OF AGREEMENT
BY AND BETWEEN THE
COMMONWEALTH OF MASSACHUSETTS,
DEPARTMENT OF AGRICULTURAL RESOURCES
AND
DEPARTMENT OF ENVIRONMENTAL PROTECTION
REGARDING
THE MANAGEMENT OF MILKHOUSE WASTEWATER

PARTIES

The Parties to this Amended Memorandum of Agreement ("MOA") are the Commonwealth of Massachusetts, Department of Agricultural Resources ("MDAR"), 251 Causeway Street, Suite 500, Boston, Massachusetts 02114, acting by and through its Commissioner, Scott J. Soares, and the Commonwealth of Massachusetts, Department of Environmental Protection ("MassDEP"), 1 Winter Street, Boston, Massachusetts 02108, with its Division of Environmental Analysis located at the Senator W.X. Wall Experiment Station, 37 Shattuck Street, Lawrence, Massachusetts 01843-1398, acting by and through its Commissioner, Kenneth L. Kimmell.

WHEREAS: MDAR supports, promotes and enhances the long-term viability of Massachusetts agriculture with the aim of helping the Commonwealth's agricultural businesses become as economically and environmentally sound as possible;

WHEREAS: Enhancing the viability of Dairy Operations is a priority for the Commonwealth, as evidenced by the recently enacted Dairy Farm Preservation Act, Chapter 310 of the Acts of 2008;

WHEREAS: MDAR, working independently and through partnerships with other organizations, seeks to provide technical and financial assistance to Dairy Operations for the adoption of conservation practices that will promote both economic and environmental sustainability while at the same time ensuring that the Dairy Operations fully comply with applicable MassDEP groundwater protection regulations;

WHEREAS: MDAR and MassDEP seek to facilitate the lawful use of appropriately engineered, cost-effective, and environmentally protective wastewater treatment methods that may constitute an improvement in Dairy Operation practices regarding milkhouse wastewater ("MHW");

WHEREAS: One of MassDEP's responsibilities is to control the discharge of pollutants to the ground waters of the Commonwealth, as well as the outlets for such discharges and any treatment works associated with these discharges;

WHEREAS: MassDEP is responsible for enforcing the Ground Water Discharge Permit Program Regulations codified at 314 CMR 5.00, which currently require Dairy

Operations to obtain groundwater discharge permits in order to discharge MHW to the ground;

WHEREAS: MassDEP recognizes that environmental benefits may accrue from Dairy Operations discharging their MHW using appropriately engineered, cost effective, and environmentally protective wastewater treatment methods rather than to the ground surface;

WHEREAS: MassDEP recognizes that compliance with the groundwater discharge permit requirements imposes a burden on Dairy Operations that may not be commensurate with the potential environmental risks associated with discharging MHW using appropriately engineered, cost effective, and environmentally protective wastewater treatment methods;

WHEREAS: the Parties wish to extend the Memorandum of Agreement set to expire on December 31, 2011 for an additional three (3) years and include additional waste treatment methods;

NOW, THEREFORE, WITNESSETH in consideration of mutual covenants herein contained, the Parties agree as follows:

PURPOSE

The purpose of this MOA is to continue and expand a Pilot Program in which MDAR will work cooperatively with Dairy Operations in Massachusetts to evaluate the potential for reducing the environmental impacts of MHW discharges through the use of appropriately engineered, cost effective, and environmentally protective wastewater treatment methods. For purposes of this MOA, the terms "milkhouse wastewater" and MHW refer to wastewater that is generated through the processing of dairy products such as milk, cheese, ice cream, and yogurt and customarily disposed of by Dairy Operations. Currently, the Ground Water Discharge Permit Program Regulations codified at 314 CMR 5.00 do not allow Dairy Operations to dispose of MHW via discharge to the ground without obtaining a groundwater discharge permit and meeting regulatory standards. As part of this MOA, MassDEP will extend enforcement forbearance to Pilot Program participants in good standing with respect to their discharge of MHW to waste treatment areas approved by the Parties. MassDEP will also analyze and review the data generated by this Pilot Program in order to evaluate whether the discharge of MHW to waste treatment areas should be allowed under 314 CMR 5.00.

AUTHORITY

M.G.L. c. 132A, rules and regulations promulgated thereunder and all other applicable statutes and authorities, including, without limitation, 304 Code of Mass Regulations.

M.G.L. c. 21, §§ 26 through 53, and rules and regulations promulgated thereunder, including 314 CMR 5.00.

TERM

The term of this MOA shall be for the period starting on the date of execution of the MOA and terminating on December 31, 2014.

AGREEMENT

MDAR's obligations:

1. MDAR, in consultation with MassDEP, shall continue to administer a Pilot Program to evaluate effluent characteristics of MHW and the efficacy of waste treatment areas that are installed and maintained in accordance with the Conservation Practice Standards for Waste Treatment Code 629 ("NRCS Code 629", January 2011) and Vegetated Treatment Area Code 635 ("NRCS Code 635", June 2006), developed by the Natural Resources Conservation Service of the United States Department of Agriculture, or other methods approved by the Parties (hereinafter collectively referred to as the "Approved Wastewater Treatment Methods"). The Pilot Program shall have two categories of participants: Grantee Farms and Pilot Farms (collectively, the "Pilot Program Participants").
2. Grantee Farms shall consist of those Dairy Operations that receive financial or technical assistance from a state or federal agency such as DAR or the NRCS to install and maintain waste treatment areas to address their MHW in accordance with an Approved Wastewater Treatment Method.
3. Owners of Grantee Farms shall execute a written agreement with MDAR to install and maintain waste treatment areas in accordance with all requirements and standards set forth in the Approved Wastewater Treatment Methods. The written agreement shall prohibit Grantee Farms from discharging MHW effluent to vegetated treatment areas during the months of December through March. This condition may be subject to change if MDAR and MassDEP agree that data and results from monitoring programs support the use and demonstrate the effectiveness of vegetated treatment areas or other treatment technologies during winter months. Those Grantee Farms that have installed vegetated treatment areas prior to the date of execution of the MOA shall be allowed to continue to use such areas during all months. MDAR shall provide MassDEP, upon request, with a copy of each executed written agreement. As appropriate, MDAR shall assist MassDEP in gathering qualitative data regarding the performance and cost-effectiveness of waste treatment areas installed and maintained by Grantee Farms.
4. Pilot Farms shall consist of those Dairy Operations that agree to participate in the groundwater monitoring program, are designated as such by the parties, and that are eligible to receive financial or technical assistance from a state or federal agency such as DAR or the NRCS to: (1) install and maintain waste treatment areas to address their MHW in accordance with Approved Wastewater Treatment Methods, including appropriate mitigation measures for potential runoff when

ambient temperatures might not allow the percolation of MHW into the ground; (2) take samples of MHW effluent flow at the point source terminus prior to discharge to the waste treatment areas, in accordance with the protocol developed by MDAR and MassDEP pursuant to this MOA, so that the MHW can be characterized; and (3) install, maintain and sample groundwater monitoring wells, in accordance with the protocol developed by MDAR and MassDEP under this MOA. MassDEP shall review and interpret the sampling data in order to characterize the MHW effluent, evaluate the impact of waste treatment areas on groundwater and surface water quality, and ensure that groundwater resources do not become contaminated.

5. MDAR agrees to notify MassDEP immediately if its inspectors determine that a Pilot Program Participant is handling MHW in a manner that does not meet the requirements and standards set forth in the applicable Approved Wastewater Treatment Method, or if appropriate mitigation measures for potential runoff when ambient temperatures might not allow the percolation of MHW into the ground are not being implemented.
6. Prior to December 31, 2014, MDAR shall provide MassDEP with an industry profile of Massachusetts Dairy Operations that (1) identifies and describes each appropriately engineered, cost-effective, and environmentally protective Approved Wastewater Treatment Method (including but not limited to vegetated treatment areas) in use by one or more Dairy Operations, and (2) quantifies the number of Dairy Operations that are using each such method (the "Industry Profile").

MassDEP's obligations:

1. When appropriate, MassDEP shall provide MDAR with written draft amendments to the data collection protocol, including, but not limited to the effluent and groundwater sampling parameters, frequencies, and other protocols the Pilot Program must incorporate to generate the research data needed by MassDEP for evaluating the potential environmental impacts of MHW discharged through waste treatment areas. MDAR shall provide MassDEP with a written response to the draft amendments with thirty days of receiving them.
2. Within thirty days of receiving DAR's written response to draft amendments to the data collection protocol, MassDEP shall finalize the data collection protocol amendments to be implemented in the Pilot Program and shall provide MDAR with a written copy.
3. MassDEP, by and through the Division of Environmental Analysis located at the Senator W.X. Wall Experiment Station, shall analyze all effluent and groundwater samples collected by MDAR inspectors in accordance with the data collection protocol, at its sole expense. MassDEP further agrees to share with MDAR all

laboratory data and analytical results pertaining to these effluent and groundwater samples.

4. Throughout the duration of this MOA, while MassDEP is gathering data on the potential environmental impacts of MHW discharged through waste treatment areas, MassDEP agrees that MHW management through the use of waste treatment areas in conformity with Approved Wastewater Treatment Methods at Dairy Operations shall not constitute an inspection priority for MassDEP.
5. MassDEP agrees to extend enforcement forbearance to the Pilot Program Participants with respect to their compliance with 314 CMR 5.00, as it relates to their discharge of MHW, including but not limited to the permit requirements contained therein, provided that: (1) the Pilot Program Participants fully comply with the terms and conditions of the Pilot Program, including but not limited to the requirement to conform with all requirements of applicable Approved Wastewater Treatment Methods, and implement appropriate mitigation measures for potential runoff when ambient temperatures might not allow the percolation of MHW into the ground; and (2) the discharge of MHW to treatment areas does not pose a significant or immediate risk to public health, safety or the environment. This enforcement forbearance shall be limited to the Pilot Program Participants and shall not be extended beyond the duration of the Pilot Program, nor to any other regulations that MassDEP enforces. This paragraph shall not preclude MassDEP from investigating complaints regarding a Pilot Program Participant's management of MHW, or from responding to specific evidence that the Pilot Program Participant may have violated MassDEP's regulations or otherwise created a significant or immediate threat to public health, safety, or the environment.
6. MassDEP agrees to analyze and review the data generated by this Pilot Program and the Industry Profile prepared by MDAR in a timely manner in order to evaluate whether and to what extent the discharge of MHW to waste treatment areas should be allowed under 314 CMR 5.00 without an individual discharge permit.

Joint Obligations of DAR and MassDEP:

MDAR and MassDEP hereby commit to continue to work together to identify and evaluate new methods of wastewater treatment, in addition to the Approved Wastewater Treatment Methods for Dairy Operations that are appropriately engineered, cost-effective, and environmentally protective. In particular, MDAR and MassDEP agree to identify and evaluate design, operation, and maintenance procedures for additional wastewater treatment methods and to explore additional Memoranda of Agreement or appropriate regulatory pathways for Dairy Operations to implement new technologies to manage MHW.

MODIFICATIONS

The terms of this MOA may only be modified by written agreement or amendment signed by both Parties.

ASSIGNMENT

The Parties hereto stipulate that there are no third-party beneficiaries to this MOA. Any third-party beneficiary relationship between MDAR and another party constitutes a breach of this MOA by MDAR and shall be unenforceable.

MDAR shall not assign, transfer, or otherwise dispose of its responsibilities under this MOA without the prior written approval of the MassDEP Commissioner or his designee. In the event of any such unapproved assignment, transfer, or disposition by MDAR, or in the event of any default of its obligations to persons or entities which are not a party to the MOA, such person or entity shall not be deemed to have acquired a claim or cause of action against MassDEP. Any such assignment, transfer, or disposition without the approval of MassDEP shall constitute a breach of this MOA which shall be cause for immediate termination of the MOA by MassDEP. MassDEP shall not be obligated to recognize any right of any person or entity to any interest in this MOA.

MassDEP shall not assign, transfer, or otherwise dispose of its responsibilities under this MOA without the prior written approval of the MDAR Commissioner or his designee. In the event of any such unapproved assignment, transfer, or disposition by MassDEP, or in the event of any default of its obligations to persons or entities which are not a party to the MOA, such person or entity shall not be deemed to have acquired a claim or cause of action against MDAR. Any such assignment, transfer, or disposition without the approval of MDAR shall constitute a breach of this MOA which shall be cause for immediate termination of the MOA by MDAR. MDAR shall not be obligated to recognize any right of any person or entity to any interest in this MOA.

TERMINATION

This MOA may be terminated by either Party, with or without cause, upon thirty calendar days written notice to the other Party, except as provided in the "Assignment" section above.

If either Party fails to materially comply with any term of this MOA, such failure shall constitute a breach. The non-breaching Party may then terminate the MOA upon five calendar days written notice to the breaching Party.

Upon termination of this MOA for any reason, all Dairy Operations in the Commonwealth, including but not limited to Pilot Farms and Grantee Farms, shall be subject to the wastewater discharge regulations in effect at the time of termination.

MERGER CLAUSE

The provisions of this MOA shall constitute the agreement between the Parties for the above-described Pilot Program. Any prior or contemporaneous oral or written statements that alter, contradict, or are in addition to the terms of this MOA, are inadmissible.

In the event of a conflict between any provision of this MOA and any communication or assertion by the Parties, the provisions of this MOA shall govern.

SEVERABILITY

If any part of this MOA is determined to be invalid, illegal, or unenforceable, such determination shall not affect the validity, legality, or enforceability of any other part of this MOA, and the remaining parts of this MOA shall be enforced as if such invalid, illegal, or unenforceable part were not contained herein.

NOTICE

Any notice given pertaining to this MOA shall be sent in writing, by hand delivery or first class mail, to the following representatives of the Parties:

If to MDAR:

Scott J. Soares, Commissioner
Department of Agricultural Resources
251 Causeway Street, Suite 500
Boston, Massachusetts 02114

And to:

Gerard Kennedy, Director for the Division of Agricultural Conservation and Technical Assistance
Department of Agricultural Resources
251 Causeway Street, Suite 500
Boston, Massachusetts 02114

And to:

Bob Ritchie, General Counsel
Office of the General Counsel
Department of Agricultural Resources
251 Causeway Street, Suite 500
Boston, Massachusetts 02114

If to MassDEP:

Kenneth L. Kimmel, Commissioner
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, Massachusetts 02108

And to:

David Ferris, Director, Wastewater Management Program
Department of Environmental Protection
One Winter Street, 5th Floor
Boston, Massachusetts 02108

And to:

Alan Slater, Section Chief, Groundwater Permit Program
Department of Environmental Protection
One Winter Street, 5th Floor
Boston, Massachusetts 02108

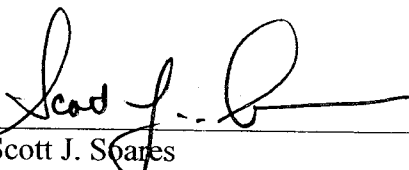
And to:

Office of the General Counsel
Attention: Deirdre Desmond
Department of Environmental Protection
One Winter Street, 3rd Floor
Boston, Massachusetts 02108

SIGNATORIES

The parties herein have read the above terms and conditions and hereby agree and approve same.

DEPARTMENT OF AGRICULTURAL RESOURCES

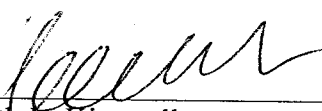


Scott J. Soares
Commissioner

Department of Agricultural Resources
251 Causeway Street, Suite 500
Boston, Massachusetts 02114

Date: 1/10/12

DEPARTMENT OF ENVIRONMENTAL PROTECTION



Kenneth L. Kimmell
Commissioner

Department of Environmental Protection
One Winter Street, 3rd Floor
Boston, Massachusetts 02108

Date: 1/26/12